

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF GEORGIA**

IN RE:)
)
KENNETH R. PIERCE,) **CHAPTER 12**
) **CASE NO. 17-60154-EJC**
Debtor.)

THIRD MOTION TO INCUR DEBT

NOW COMES KENNETH R. PIERCE, Debtor in the above-referenced matter (“Debtor”), and files this Third Motion to Incur Debt pursuant to 11 U.S.C. § 364(d) and Rule 4001(c) as follows:

1.

Debtor filed a voluntary petition for relief under Chapter 12 of the Bankruptcy Code on April 3, 2017.

2.

Debtor is engaged in farming operations and wishes to incur debt with the Bank of Newington for the purpose of paying his 2018 farming expenses, including but not limited to: land rent, seed, fertilizer, chemicals, fuel, irrigation, repairs and maintenance, labor, equipment rental, and supplies. Proceeds of the 2018 Loan would also be used to fund a portion of the 2018 payments due under Debtor’s confirmed Chapter 12 Plan, including but not limited to, monthly payments maturing during 2018 on Claim No. 4 filed by the Bank of Newington.

3.

The Bank of Newington is willing to provide Debtor post-petition financing with a \$1,160,000.00 line of credit, which would mature on March 1, 2019 at an interest rate of 8.000% per annum (hereinafter the “2018 Loan”). See Promissory Note and related Exhibits A, B and C attached hereto as Exhibit 1. The Court previously approved two motions to incur debt with the Bank of Newington concerning Debtor’s 2017 farming operations (“First Loan” and “Second Loan”). Both the First Loan and the Second Loan have been repaid in full by Debtor.

4.

The 2018 Loan would be secured by various collateral, including but not limited to, (a) a first-in-priority security interest in all 2018 Crops and Farm Products of the Debtor, now existing or hereafter raised or grown, all proceeds and products of said crops, all rights and interests of

the Debtor in and to payments under any federal or state governmental programs (including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance payments, diversion payments, conservation reserve payments, and payments arising under any program administered by the Commodity Credit Corporation and/or the United States Department of Agriculture), crop insurance, and an assignment of rents and leases; and (b) all existing collateral in which the Bank of Newington currently holds a perfected security interest, all of said collateral being more particularly described and identified in the Promissory Note and related Exhibits A, B and C attached hereto as Exhibit 1 and incorporated herein by reference (hereinafter "the Collateral"). Except for the security interests related to the 2017 and 2018 crops, the Collateral is also the same collateral held by the Bank of Newington pre-petition.

5.

Debtor wishes to be allowed to incur the debt from the Bank of Newington as described herein and in the attached Promissory Note and Exhibits and to execute any and all documents required to perfect or continue the Bank of Newington's security interests in the Collateral described herein. The 2018 Loan is necessary for Debtor to finance his farming operations for his 2018 crops. Debtor needs the funds to pay his 2018 land rents, which are now due or about to come due, to enter into leases for the 2018 crop year, to pay for his 2018 farming expenses, and to fund a portion of the 2018 payments required under his confirmed Chapter 12 Plan. The 2018 Loan will be re-paid from the sale of the 2018 crops, farm program payments and/or crop insurance payments per the terms of the attached Promissory Note.

6.

Debtor contends that he cannot obtain the necessary funds elsewhere within the short time needed to pay for land rents and other 2018 expenses. Upon information and belief, the Bank of Newington will be adequately protected by the Collateral. Debtor contends that immediate and irreparable harm to the estate will occur if he does not receive authorization to incur debt.

WHEREFORE, Debtor respectfully requests that he be permitted to incur debt and obtain a line of credit of up to \$1,160,000.00 with the Bank of Newington pursuant to the terms of the Promissory Note and secured as set forth herein.

This 27th day of February, 2018.

H. LEHMAN FRANKLIN, P.C.

P.O. Box 1064
Statesboro, GA 30459
(912) 764-9616
hlfpcbankruptcy@hotmail.com

/s/ Kimberly S. Ward
Kimberly S. Ward
Georgia Bar No. 682042
Attorney for Debtor

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically served the foregoing Third Motion to Incur Debt with Proposed Order upon James C. Overstreet, Jr., Chapter 12 Trustee; and Matthew Mills, Assistant U.S. Trustee; and R. Kenny Stone, Attorney for the Bank of Newington.

This 27th day of February, 2018.

H. LEHMAN FRANKLIN, P.C.

P.O. Box 1064
Statesboro, GA 30459
(912) 764-9616
hlfpcbankruptcy@hotmail.com

/s/ Kimberly S. Ward
Kimberly S. Ward
Georgia Bar No. 0682042
Attorney for Debtor